

**CITY OF WEST DES MOINES
BOARD OF ADJUSTMENT COMMUNICATION**

Meeting Date: May 29, 2013

Item: Variance Request – Medical Arts, LLC – Steve Lombardi – 1300 37th Street – Request for a 60 ft variance of the required 500 ft frontage for an interstate sign (VAR-2013-003/VAR-001451-2013)

Requested Action: Approval of a Variance Request

Case Advisor: Kevin Wilde, Sign and Zoning Administrator 

Applicant's Request: The applicant, Steve Lombardi, on behalf of Medical Arts LLC, is requesting a 60 ft variance of the required 500 feet of interstate frontage required for an interstate sign for the property at 1300 37th Street. Due to a sewer and associated easement running across the property, variances for the setbacks are also needed to avoid conflicts with the sewer and the sign location.

History: The property is located west of the West Towers building along Valley West Drive and north of the Colony Park Building along Woodland Avenue to the north of Valley High School. The Polk County Assessor shows that the building was built in 1974 and that the property was platted in 1984. The property, even though it is addressed as 1300 37th Street, has no public street frontage. The lot has 440 feet of frontage on the interstate but the only access to the property is via private drives through the parking lots of West Towers and Colony Park. The Medical Arts Building is a two story building that is partially underground. Coupled with the fact that the building is surrounded by multi-story buildings (e.g., West Towers – 9 stories, Colony Park – 6 stories, and the three story apartments of Boulder Ridge to the west); the Medical Arts Building has very limited visibility.

City Council Subcommittee: This item was not presented to the Development and Planning City Council Subcommittee.

Staff Review and Comment: This request was distributed to other City departments and other agencies for their review and comment. The property is zoned Professional Commerce Park (PCP) which requires a minimum 500 ft of interstate frontage to be eligible for an interstate sign. The subject property has 440.71 feet of frontage but also has no public street frontage. Currently, the property has building signage and a monument sign located on the drive coming north off of Woodland Avenue that is approximately 320 ft north of Woodland Avenue. Staff is of the opinion that this is a situation that is unique enough that a variance to allow some measure of signage would be warranted.

During the review of the request, Engineering staff commented that there is a sewer and easement that runs along the north side of the property and then cuts across the eastern portion of the site towards the south east. Staff conveyed the information to the applicant and his sign contractor had the sewer marked and located the sign accordingly to avoid the easement. The applicant is proposing to place the sign east of the parking lot on the east side of the building approximately 22 ft from the east property line and eight (8) feet from the northern property line adjacent to the interstate.

Per the City Code, interstate signs are to have a minimum 200 ft sideyard setback and be placed a minimum of 20 ft from the interstate right-of-way. Because of the sewer line and easement, these requirements are problematic to meet. The sign would need to be located in the parking lot or up against the building to meet these requirements and avoid the easement area. Staff supports the request of the applicant to locate the sign as proposed and would support allowing the sign with a 22 ft sideyard setback and an eight (8) foot setback from the right-of-way of the interstate.

It should also be noted that in one of the concepts the applicant submitted, a digital time and temperature sign is shown. The City Code would allow this but the time and temperature sign cannot exceed one-third (1/3) of the allowed signage, which for an interstate sign would be 100 square feet. Therefore, the maximum size of the time and temperature portion of the sign if that option is considered would be approximately 33 square feet. The sign will need to comply with all other City Code requirements for an interstate sign.

Variance Findings. Title II of the City Codes discusses the variance procedure. All five (5) conditions must be met in order to grant a variance. Based upon a review of the submitted variance request, staff has made the following findings on the proposed project:

1. That the proposed development or use is consistent with the West Des Moines comprehensive plan and any applicable subarea plan. *The use is consistent with the West Des Moines comprehensive plan.*
2. That there are special circumstances or exceptional characteristics applicable to the subject property with regard to size, shape, topography or location, which do not apply generally to comparable properties in the same vicinity and zones. *The property is an isolated lot that does not have public street frontage. They are also surrounded by multi-storied buildings that would limit the visibility of any building signage from the public streets in such a manner that the best visibility for the site is from the interstate.*
3. That the strict application of the zoning regulations as they apply to the subject property will result in practical difficulties or unnecessary hardships inconsistent with the general purpose of such regulations provided that such hardships shall not be self-imposed by the applicant or his or her successor in interest. *Staff is of the opinion that a hardship does exist with the property due to the lack of public street frontage that was created when the property was subdivided in the 1980's.*
4. That there have been no changes in the character of the site or its surroundings which detrimentally affect the environment. *The variance would not be detrimental to the environment.*
5. That the granting of such variance does not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements. *The variances to the setbacks would be necessary to avoid potential impacts to the existing sewer and associated easement. Staff believes that the applicant and his contractor have tried to make a reasonable accommodation in the placement of the sign to avoid impacts to sewer and that will not be a detriment to nearby properties.*

Staff Recommendations and Conditions of Approval: Based upon the information presented in the Variance Findings, staff recommends the Board of Adjustment approve the applicant's request for a 60 foot variance of the required 500 ft interstate frontage necessary for the placement of an interstate sign on the property and due to the sewer line and easement, staff would also recommend approval of a sideyard variance to allow the sign to be placed 22 feet from the east lot line and eight (8) feet from the interstate right-of-way.

Noticing Information: On May 10, 2013, notice of the May 29, 2013, Board of Adjustment Public Hearing on this project was published in the Des Moines Register Community Section. Notice of this public hearing was also mailed to all surrounding property owners within 370 feet of the subject property on May 9, 2013.

Property Owner/Applicant:

Steve Lombardi
Lombardi Properties/Medical Arts LLC
1300 37th Street, Suite 6
West Des Moines, IA 50266
sdlombardi@aol.com
515-222-1110

Comprehensive Plan: Office
Existing Zoning: Professional Commerce Park (PCP)
Existing Land Use: Office

Surrounding Land Uses:

North	Existing Land Use: I-235 Existing Zoning: NA Comprehensive Plan Designation: Interstate Highway
South	Existing Land Use: Office (Colony Park) Existing Zoning: Professional Commerce Park (PCP) Comprehensive Plan Designation: Office
East	Existing Land Use: Office (West Towers) Existing Zoning: Professional Commerce Park (PCP) Comprehensive Plan Designation: Office
West	Existing Land Use: Apartments (Boulder Ridge) Existing Zoning: High Density Residential District (RH-16) Comprehensive Plan Designation: Residential High Density

Total Land Area: 3.218 acres

Attachments:

Attachment A	-	Resolution for Approval
Attachment B	-	Location Map
Attachment C	-	Proposed Sign Elevation
Attachment D	-	Two possible concepts of the sign design
Attachment E	-	Site Plan Showing Sewer Line
Attachment F	-	Maplenol Heights Plat
Attachment G	-	Enlargement showing approximate sign location

Prepared by: K. Wilde, Development Services PO Box 65320 West Des Moines IA 50265-0320 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines PO Box 65320 West Des Moines IA 50265-0320

RESOLUTION

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES, APPROVING A VARIANCE REQUEST (VAR-2013-003) FOR A SIXTY FOOT (60') VARIANCE FROM THE REQUIRED FIVE HUNDRED FOOT (500') FRONTAGE REQUIRED FOR AN INTERSTATE SIGN AND SETBACK VARIANCE TO ALLOW THE PLACEMENT OF THE SIGN TWENTY TWO FEET (22') FROM THE EAST LOT LINE AND EIGHT FOOT (8') FROM THE INTERSTATE RIGHT-OF-WAY.

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq. of the West Des Moines Municipal Code, the applicant, Steve Lombardi on behalf of Medical Arts LLC, has requested approval of a variance from *Title 9, Chapter 18: Signs, Section 9-18-21: Sign Regulation Matrix*, pertaining to interstate signs in a Professional Commerce Park District (PCP), to allow the placement of an interstate sign on the property at 1300 37th Street, and legally described as follows:

Legal Description of Property

LOT 2, MAPLENOL HEIGHTS,
 NOW IN AND FORMING A PART OF THE
 CITY OF WEST DES MOINES, POLK COUNTY, IOWA;

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

WHEREAS, on May 29, 2013, the Board of Adjustment held a duly-noticed public hearing to consider the application for a Variance (VAR-2013-003);

NOW, THEREFORE, THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. The findings, for approval, in the staff report, dated May 29, 2013, or as amended orally at the Board of Adjustment hearing of May 29, 2013, are adopted.

SECTION 2. A sixty foot (60') variance from the required 500 foot interstate frontage to allow the placement of an interstate sign on the subject property is hereby granted, based upon the findings stated in attached Exhibit 'A' and the information presented at the public hearing on May 29, 2013, and adopted in this resolution at their May 29, 2013, meeting. In addition, a variance to allow the sign to be located a minimum of twenty two feet (22') from the east property line and a minimum of eight feet (8') from the right-of-way line of Interstate 235 is approved due to potential conflicts with a sewer and sewer easement as noted in the May 29, 2013, staff report. Said approval shall be subject to compliance with all of the conditions in the staff report dated May 29, 2013, and attached as Exhibit 'B', including conditions added at the hearing. Violations of any such conditions shall be ground for revocation of the permit, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on May 29, 2013.

Michael Blaser, Vice Chairperson
Board of Adjustment

ATTEST:

Recording Secretary

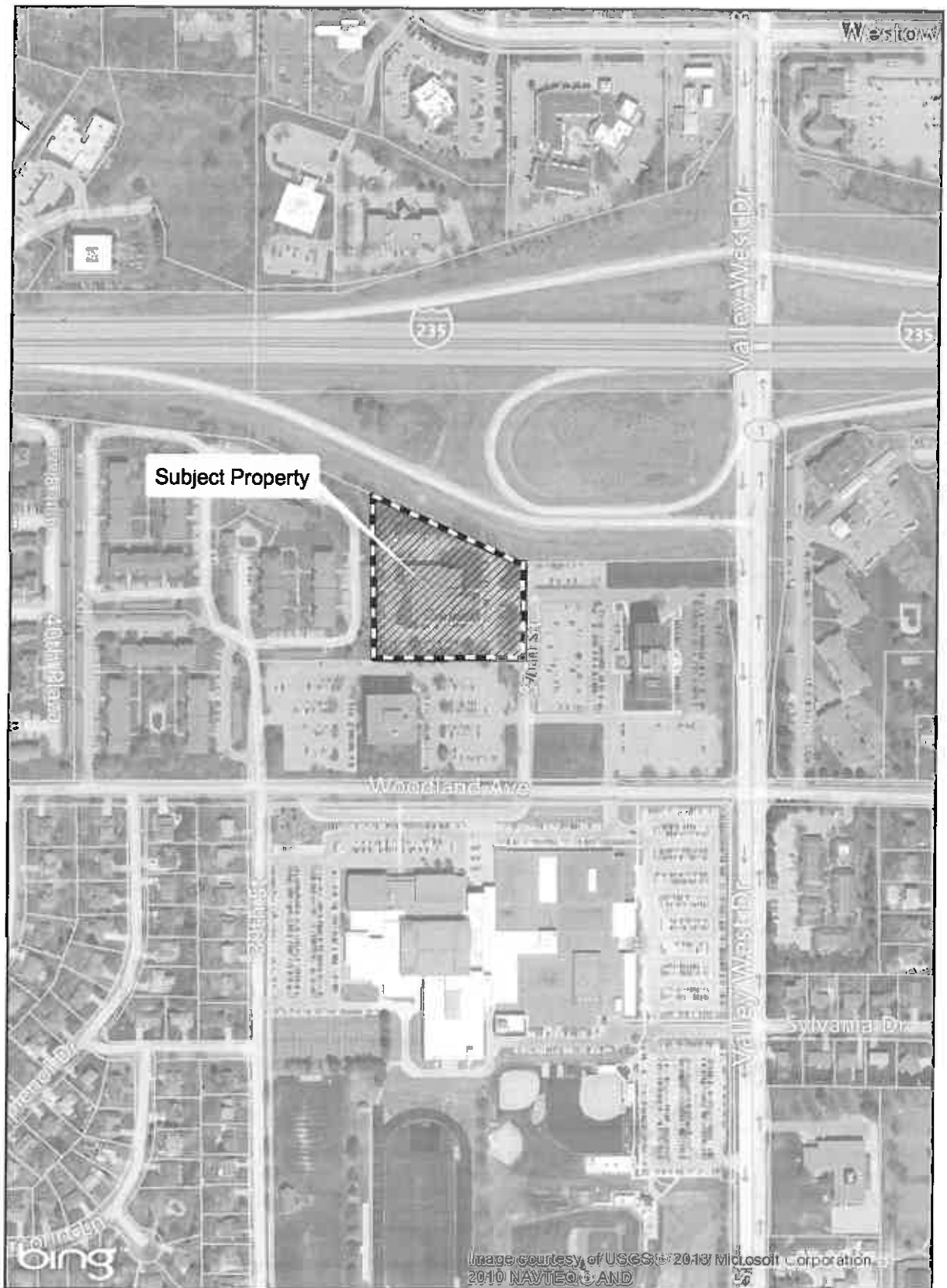
I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment for the City of West Des Moines, Iowa, at a regular meeting held on May 29, 2013, by the following vote:

AYES:
NAYS:
ABSTAIN:
ABSENT:

ATTEST:

Recording Secretary

Location Map
1300 37th Street



Medical Arts Building

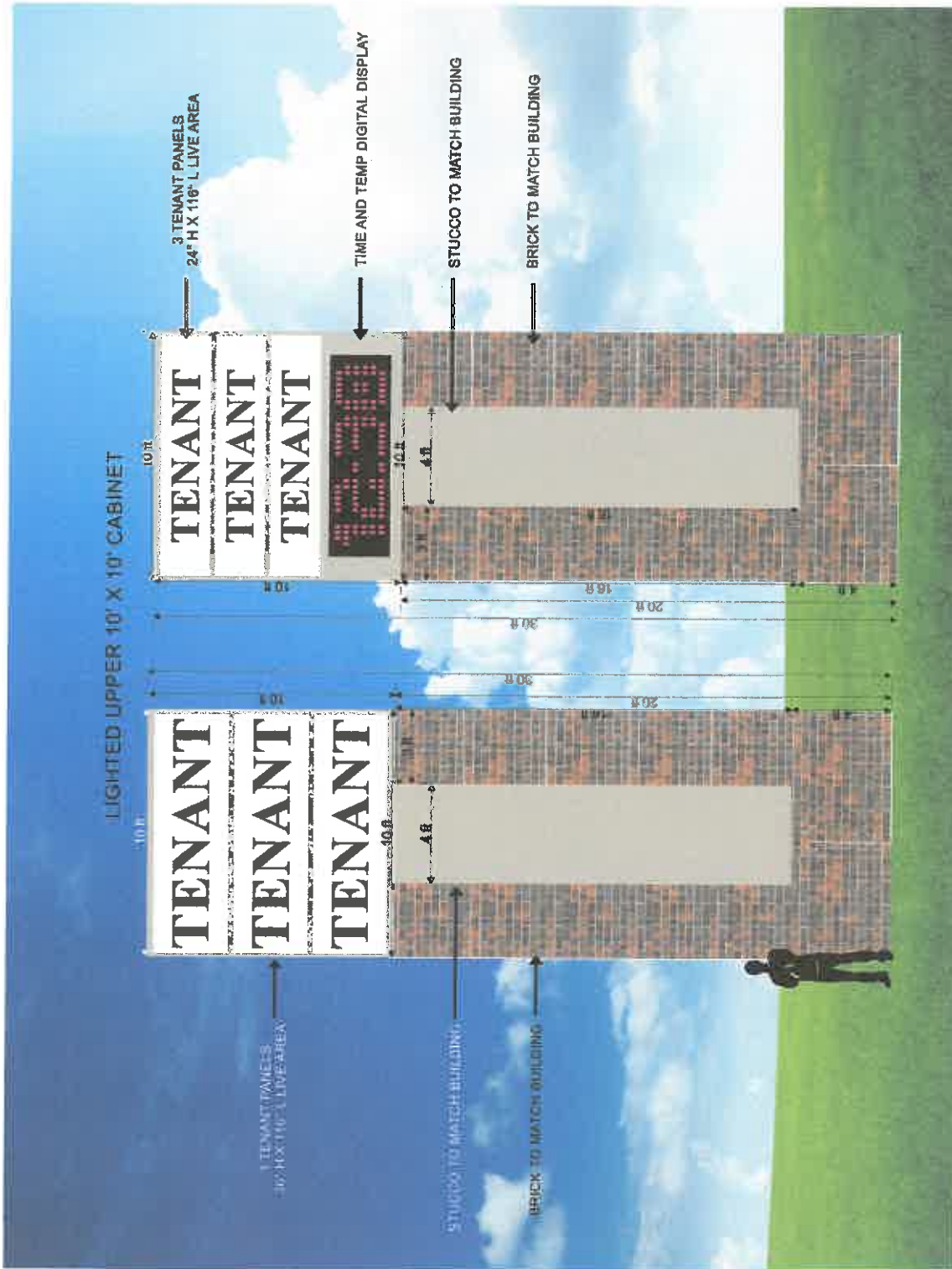


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Order Date:	Salesperson: John McCall	
Comments:		



Newton, Iowa

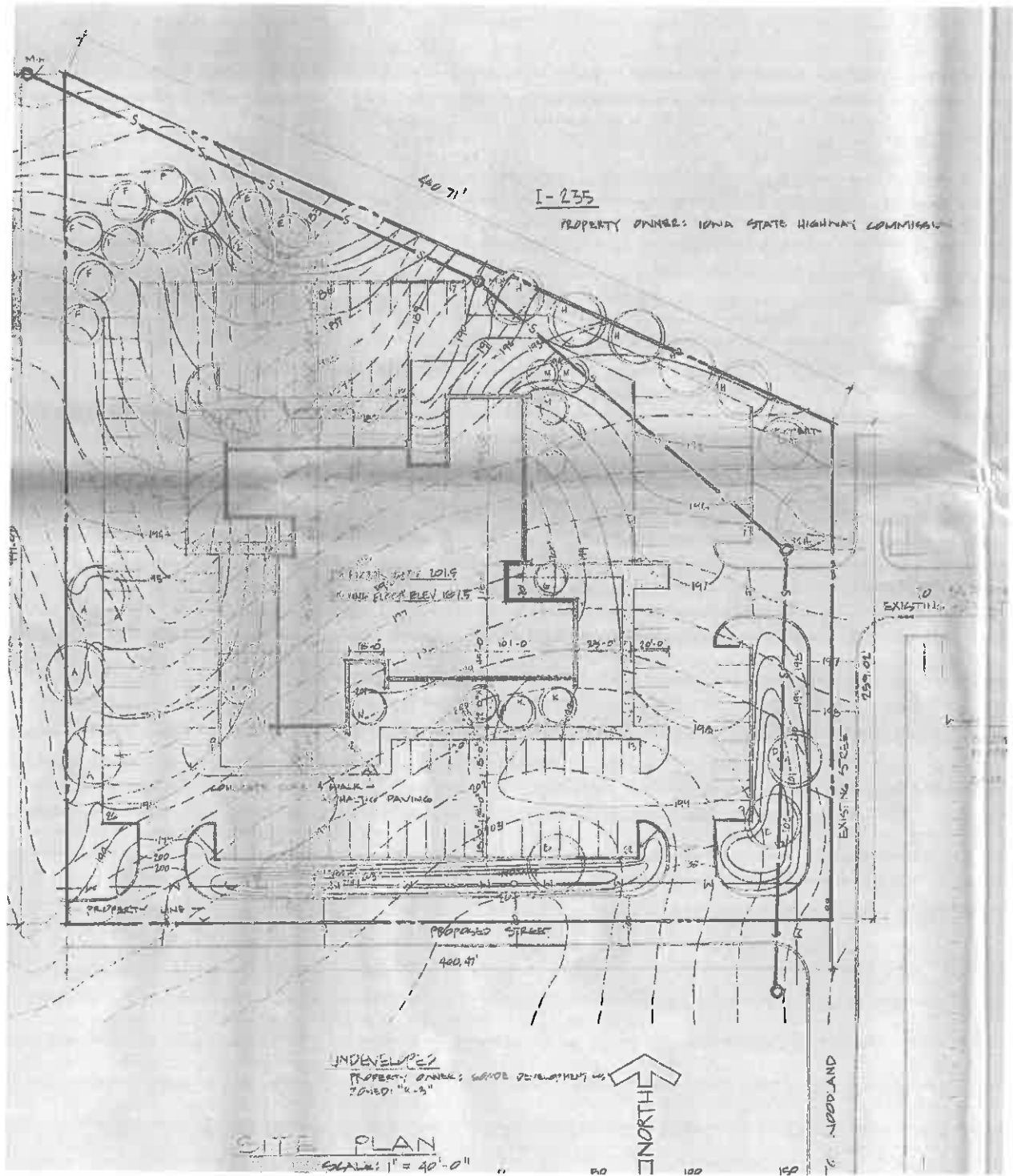
Customer:	Steve
Company:	Professional Arts Building
Address:	1300 37th STE 6
City:	DSM
State/ZIP:	IA
Phone:	515-222-1110
Fax:	



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Address:	1300 37th STE 6
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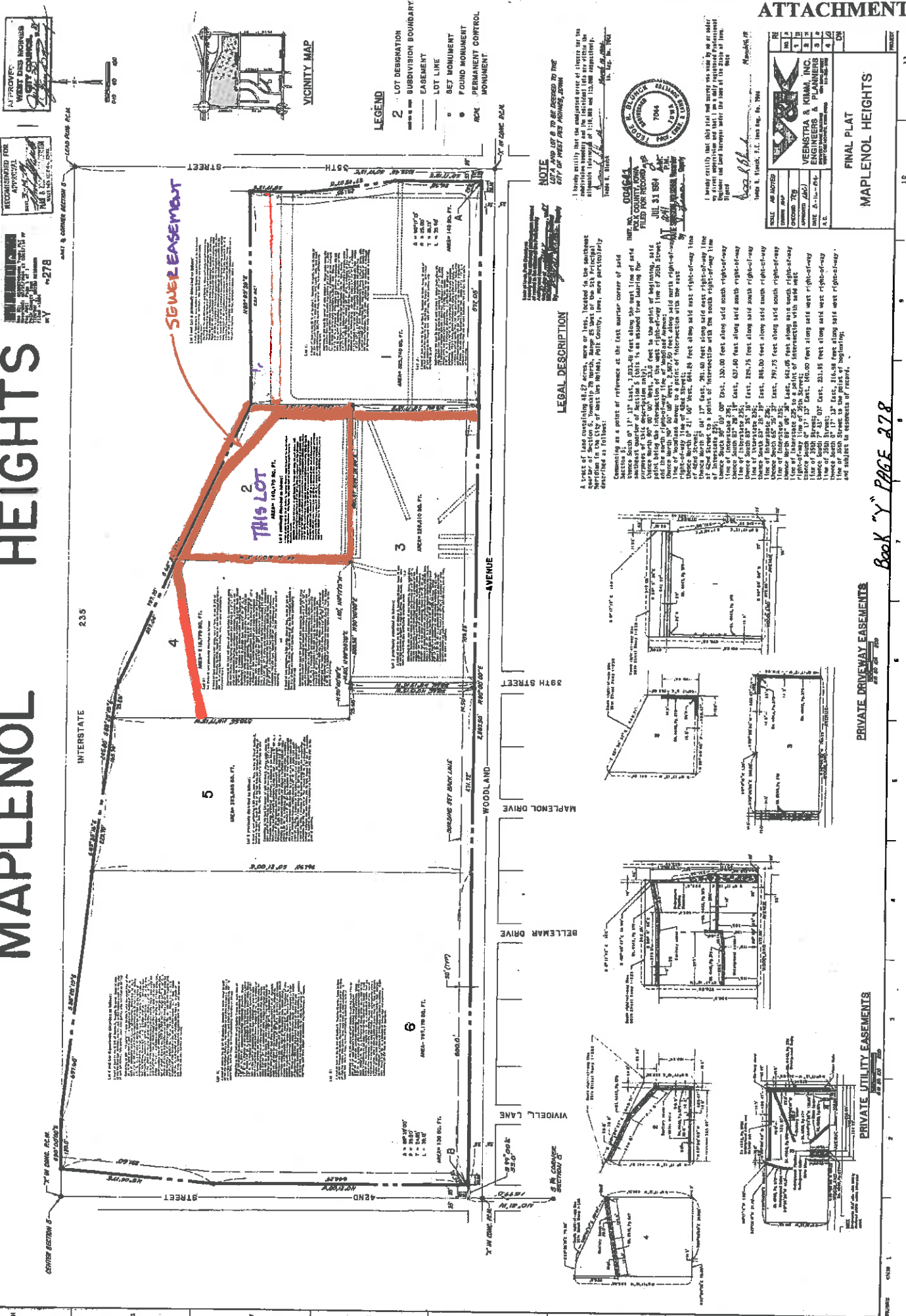


Job No.:		Date:	4/26/2013
Order Date:		Salesperson:	John McCall
Comments:			



MAPLENOL HEIGHTS

ATTACHMENT F



PRIVATE DRIVEWAY EASEMENTS

PRIVATE UTILITY EASEMENTS

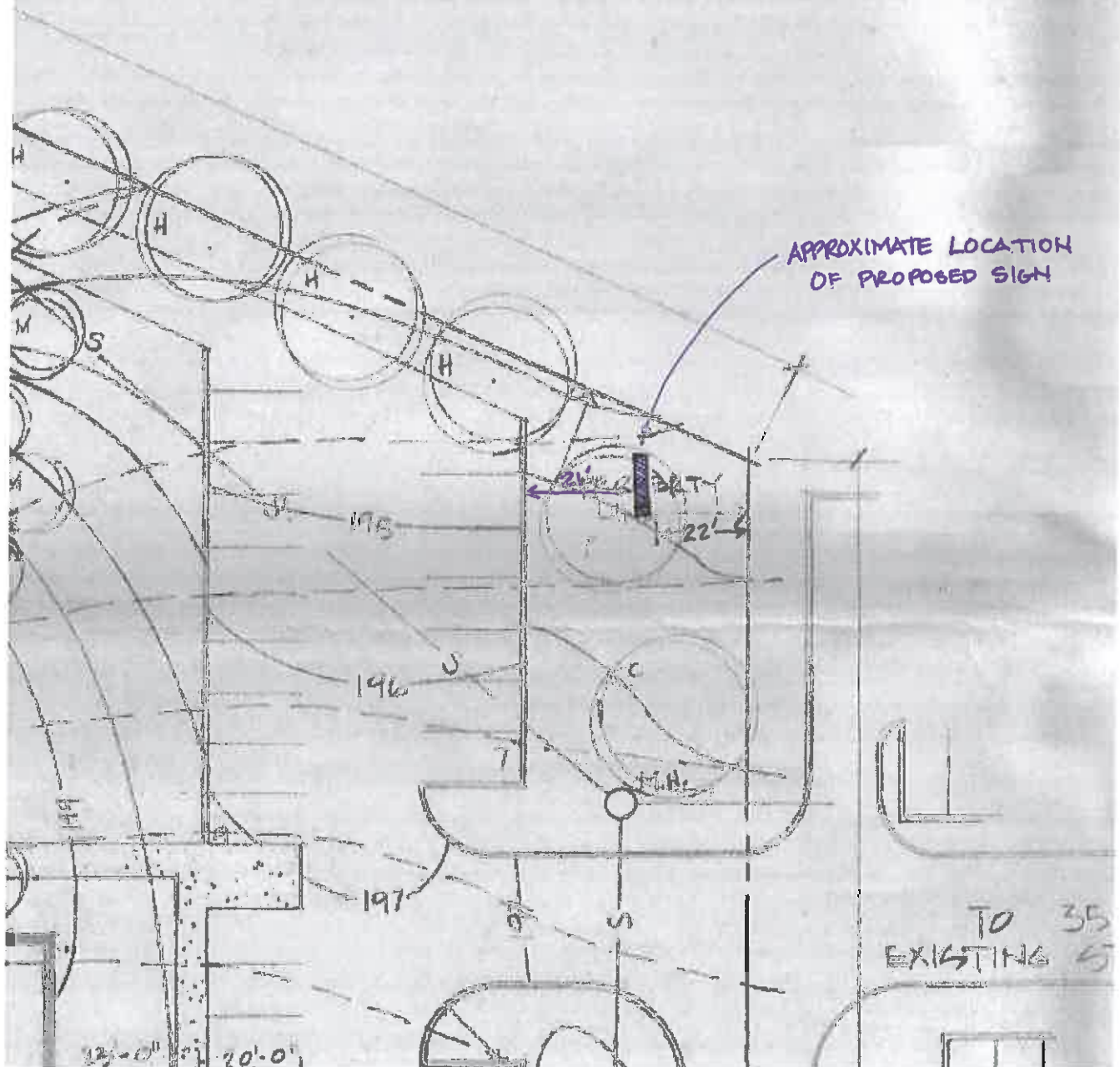
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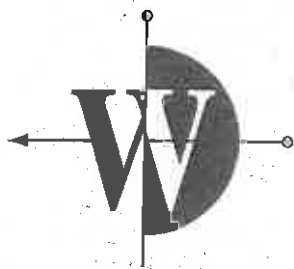
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PROPERTY OWNER: IOWA STATE HIGHWAY COMMISSION





THE CITY OF

West Des Moines®

www.wdm.iowa.gov

Development Services

4200 Mills Civic Parkway, Suite 2D
P.O. Box 65320
West Des Moines, IA 50265-0320

Building Inspection
515-222-3630

Planning and Engineering
515-222-3620

FAX 515-273-0602
TDD/TTY 515-222-3334

E-mail
developmentservices@wdm.iowa.gov

May 20, 2013

Westown Parkway Residence
3530 Westown Parkway
West Des Moines, IA 50266

Canine Family, LLC /Schneider Management
11040 Hickman Road
Clive, IA 50325-3740
Attn: Phil Schneider and Brian Schneider

Re: OFFICIAL NOTICE OF POSSIBLE CODE VIOLATIONS
Westown Parkway Residence
3530 Westown Parkway
West Des Moines, IA 50266

To Whom It May Concern:

The zoning of the property at 3530 Westown Parkway is Regional Commercial District (RC). In the West Des Moines City Code, Section 9-6-6: *Commercial, Office and Industrial Use Regulations*, within the Regional Commercial District, Hotels (SIC 701) are a permitted use, but Rooming and Boarding Houses and Apartments are prohibited. When the Westown Parkway Residence was initially established, West Des Moines city staff met with the owner, Mr. Phil Schneider, and explained that residential apartments were prohibited and that to be allowed to establish a lodging use at the above residence, the use would need to be a hotel use. Mr. Schneider indicated that he understood and the occupancy of the building as a hotel was allowed.

In 2004, the question of the use was again raised as part of the discussion of the French Way Cleaners (MM-03-07) being allowed within the building and a response letter was submitted by Brian Schneider on June 18, 2004. In that letter, Mr. Schneider stated, "*Westown Parkway Residences accepts stays of all durations (including nightly stays), subject to the desire of the guest. There is no required minimum stay.*"

In 2009, as part of their annual fire inspection of commercial properties, the West Des Moines Fire Department was told that the use of the property had changed and that the building was no longer a hotel but rather a rental property as they will not allow a tenant to stay for less than 90 days. If a request for a stay of less than 90 days is received, the customer is referred to the Clive Residences on Hickman Road. This information was validated on January 7, 2013, when one of my staff called looking for a room for his son for a week or two and as noted in 2010, he was referred to the Clive location. In review of numerous websites, the stated minimum "lease" duration for the Westown Parkway Residences is three (3) months.

Based upon the information noted here, it appears that the use of the building at 3530 Westown Parkway is being operated as an apartment use, contrary to the indications of the letter in 2004 and in violation of the West Des Moines City Code.

Per the Iowa Administrative Rules/Iowa Administrative Code/4810 Inspections and Appeals Department, Chapter 30, a hotel is defined as follows:

"Hotel" means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests." A "Transient guest means an overnight lodging guest who does not intend to stay for any permanent length of



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Development Services

4200 Mills Civic Parkway, Suite 2D
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Page 2 of 2
May 20, 2013

OFFICIAL NOTICE OF CODE VIOLATIONS – 3530 Westown Parkway

time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest."

To confirm that the use of the property is in compliance with the West Des Moines City Code and the State's Administrative Rules, we are requesting that you provide the following documentation:

1. An explanation of how the Westown Parkway Residence complies with the state definition for a hotel;
2. A copy of the inspection report from the Iowa Department of Inspections and Appeals to verify that you have been inspected as a hotel in accordance with State requirements;
3. Documentation that you have paid Hotel/Motel taxes in accordance with Chapter 3-3: *Hotel Motel Tax*, of the West Des Moines City Code, and Iowa Code 423A.

Failure to provide this information by May 31, 2013, to validate the use of the building as a hotel may result in this issue being turned over to the City Attorney's office for possible legal action including enforcement as a Municipal Infraction. A Municipal Infraction is a civil offense punishable by a civil penalty of not more than seven hundred fifty dollars (\$750.00) for each violation or, if the infraction is a repeat offense, a civil penalty not to exceed one thousand dollars (\$1,000.00) for each repeat offense. Each day the violation continues can be considered a separate offense. The violation of any section of City Code or of any law, rule, or regulation adopted by reference in the City Code shall constitute a municipal infraction and is subject to civil penalties and/or subject to abatement for halting the violation.

Thank you for your prompt attention in this matter and for your cooperation. If you have any questions or wish to further discuss this matter, please contact me at 515-222-3620 or via email at chris.shires@wdm.iowa.gov

Sincerely,

Christopher Shires, AICP
Development Planning and Inspection Manager

cc: Jason Wittgraf, Assistant City Attorney
Mike Whitsell, Fire Marshal